

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



November 9, 1992

ALL-COUNTY INFORMATION NOTICE No. I-61-92

TO: ALL-COUNTY WELFARE DIRECTORS

SUBJECT: ELDER ABUSE AND DEPENDENT ADULT CIVIL PROTECTION ACT

This is to direct your attention to the provisions of Chapter 774, Statutes of 1991, (Senate Bill (SB) 679, Mello), the Elder Abuse and Dependent Adult Civil Protection Act.

This legislation authorizes the award, by courts, of attorney's fees and costs where it is proven that a defendant is liable for physical abuse, neglect, or fiduciary abuse as defined under Welfare and Institutions Code (W&IC) Section 15610, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse.

The legislation allows the court which has jurisdiction over probate conservatorships to also have concurrent jurisdiction over civil actions involving a claim for relief arising out of the above types of abuse, if a conservator had been appointed for the victim prior to the initiation of the civil action. The court would determine whether it is appropriate to transfer the case to the civil court.

Under the new law, it is very important to note that if the elder or dependent adult becomes deceased, the court does not lose jurisdiction of any claim for relief. If the abuse victim is deceased, upon petition, the representative of the decedent, or person(s) entitled to succeed to the estate, have a right to continue a civil action.

This legislation should help to encourage interested persons to retain attorneys to bring civil action, for damages and attorneys fees, against abusers of elder and dependent adults. Also, the threat of civil action may prove to be a disincentive for potential abusers. Further, the fact that probate conservatorship courts now have concurrent jurisdiction over civil actions will avert the lengthy procedural delays characteristic of civil courts. Finally, this legislation affords greater protection for elder and dependent adults by encouraging representation by attorneys in civil actions against abusers.

Attached is a copy of an article appearing in California Lawyer, June 1992 issue, which provides a description of a case in which civil action was taken under the new law, against abusers of an impaired elder person. The case was won on behalf of the plaintiff although he became deceased before judgment by the court. Also, attached is a copy of the chaptered legislation.

The telephone contact for this letter is the Adult Protective Services Unit of the Adult Services Branch at (916) 657-3543 or (916) 657-2143.



LOREN D. SUTER  
Deputy Director  
Adult and Family Services

Attachments

cc: CWDA

# The Elder Helper

A new state law works the way it was supposed to  
—frustrating those who prey on the elderly

CA Lawyer

June '92 P. 28

**T**HE LATE Roland H. Henry of Watts had enough problems before unlicensed real estate broker Kevin Merritt came into his life in 1989. Henry was an 84-year-old widower crippled by arthritis, nearly blind, an amputee and functionally illiterate. He was also \$3,700 behind on a loan secured by his home of 30 years.

In 1989 one of Merritt's employees convinced Henry he could obtain a loan for him. One of the papers Henry signed to secure the loan was a grant deed transferring title of his home to a company owned by Merritt.

A month later Henry's pro bono lawyers brought an action of fraud against Merritt and his companies and managed to prevent a foreclosure proceeding on the home. Henry died last year, but had he lived until April of this year he would have been able to enjoy a victory over Merritt, several of his associates and one of his companies—with a \$1.6 million jury verdict. What's unusual about the judgment is that one of the causes of action was an emotional distress claim—perhaps the first one in the state won on behalf of a deceased plaintiff.

The reason? A little-heralded law known as the Elder Abuse and Dependent Adult Civil Protection Act, which went into effect in January, allows litigants to recover pain and suffering damages, attorneys fees and punitive damages on behalf of a victim who died. Welf & IC §15657-1567.3.

"We believe this to be the first case where emotional distress damages were awarded on behalf of a plaintiff who

died before a trial," says Stephen T. Owens, a partner in the Los Angeles office of Graham & James. Owens and Kenneth W. Babcock of Public Counsel in Los Angeles were Henry's pro bono lawyers and pursued the case for his sister, Canzata Y. Castleberry, after his death.

The law used by the attorneys was sponsored by state Senators Henry Mello (D-Santa Cruz) and Ed Davis (R-Northridge) and drafted by Marc

Hankin, a partner with Grayson, Givner, Booke, Silver & Wolfe in Encino. Hankin calls the potential consequences of the ruling a turning point for elderly fraud victims desperately in need of legal representation. "The legislation is a fundamental change in the tort law. That's why I wrote it," he says. "The more

egregious your abuse of the elderly was, the less likely you were to be sued for it—until now. This says no more. It's no longer open season on the elderly."

Elder-law specialist Michael Gilfix of Gilfix Associates in Palo Alto adds that the law is nothing short of "revolutionary" for his specialty's practitioners and for heightening awareness of legal problems faced by the elderly. "This legislation is a gift," he says. "It really grabs hold of the problem."

Babcock hopes the case's most immediate effect will be on sympathetic lawyers previously unwilling to litigate elder-abuse cases for fear of having a client die before trial. "This just gives us one more tool in battling home-equity fraud," says Babcock. "Quite honestly, we hope that more private-sector firms will want to get involved in this sort of pro bono work."

—JIM CHRISTIE



Pro bono lawyers Stephen T. Owens (left) and Kenneth W. Babcock

Senate Bill No. 679

CHAPTER 774

An act to amend the heading of Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of, to amend Section 15600 of, and to add Article 8.5 (commencing with Section 15657) to Chapter 11 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to abuse of elders and dependent adults.

[Approved by Governor October 9, 1991. Filed with  
Secretary of State October 10, 1991.]

LEGISLATIVE COUNSEL'S DIGEST

SB 679, Mello. Abuse of elders and dependent adults: civil actions.

Existing law requires the reporting by certain health practitioners and employees of law enforcement agencies to report known or suspected instances of abuse, as defined, of elders or dependent adults.

This bill would authorize the award, by courts, of attorney's fees and costs where it is proven by clear and convincing evidence that a defendant is liable for abuse of an elder or dependent adult, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse. This bill would further provide that the superior court having jurisdiction over probate conservatorships shall have concurrent jurisdiction over these suits, and would set forth the factors to be considered in determining an award.

This bill would also specify that actions against health care professionals for professional negligence shall be governed by laws specifically applicable to professional negligence actions, rather than by these provisions.

This bill would incorporate additional changes to cross references of code sections to be renumbered by SB 1177, to be operative only if SB 1177 is chaptered and becomes operative.

*The people of the State of California do enact as follows:*

SECTION 1. The heading of Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code is amended to read:

CHAPTER 11. ELDER ABUSE AND DEPENDENT ADULT CIVIL  
PROTECTION ACT

SEC. 2. Section 15600 of the Welfare and Institutions Code is amended to read:

15600. (a) The Legislature recognizes that elders and

dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect these persons.

(b) The Legislature further recognizes that a significant number of these persons are elderly. The Legislature desires to direct special attention to the needs and problems of elderly persons, recognizing that these persons constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse, neglect, and abandonment.

(c) The Legislature further recognizes that a significant number of these persons have developmental disabilities and that mental and verbal limitations often leave them vulnerable to abuse and incapable of asking for help and protection.

(d) The Legislature recognizes that most elders and dependent adults who are at the greatest risk of abuse, neglect, or abandonment by their families or caretakers suffer physical impairments and other poor health that place them in a dependent and vulnerable position.

(e) The Legislature further recognizes that factors which contribute to abuse, neglect, or abandonment of elders and dependent adults are economic instability of the family, resentment of caretaker responsibilities, stress on the caretaker, and abuse by the caretaker of drugs or alcohol.

(f) The Legislature declares that this state shall foster and promote community services for the economic, social, and personal well-being of its citizens in order to protect those persons described in this section.

(g) The Legislature further declares that uniform state guidelines, which specify when county adult protective service agencies are to investigate allegations of abuse of elders and dependent adults and the appropriate role of local law enforcement, do not currently exist, and the implementation of these guidelines is necessary in order to ensure that a minimum level of protection is provided to elders and dependent adults in each county.

(h) The Legislature further finds and declares that infirm elderly persons and dependent adults are a disadvantaged class, that cases of abuse of these persons are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this abuse due to problems of proof, court delays, and the lack of incentives to prosecute these suits.

(i) Therefore, it is the intent of the Legislature in enacting this chapter to provide that adult protective services agencies, local long-term care ombudsman programs, and local law enforcement agencies shall receive referrals or complaints from public or private agencies, from any mandated reporter submitting reports pursuant to Section 15630, or from any other source having reasonable cause to know that the welfare of an elder or dependent adult is endangered, and shall take any actions considered necessary to protect the elder or dependent adult and correct the situation and

ensure the individual's safety.

(j) It is the further intent of the Legislature in adding Article 6 (commencing with Section 15660) to this chapter to enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults.

SEC. 3. Article 8.5 (commencing with Section 15657) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 8.5. Civil Actions for Abuse of Elderly or Dependent  
Adults

15657. Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in subdivision (c) of Section 15610, neglect as defined in subdivision (d) of Section 15610, or fiduciary abuse as defined in subdivision (f) of Section 15610, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, in addition to all other remedies otherwise provided by law:

(a) The court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) The limitations imposed by subdivision (c) of Section 573 of the Probate Code on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer.

15657.1. The award of attorney's fees pursuant to subdivision (a) of Section 15660 shall be based on all factors relevant to the value of the services rendered, including, but not limited to, the factors set forth in Rule 4-200 of the Rules of Professional Conduct of the State Bar of California, and all of the following:

(a) The value of the abuse-related litigation in terms of the quality of life of the elder or dependent adult, and the results obtained.

(b) Whether the defendant took reasonable and timely steps to determine the likelihood and extent of liability.

(c) The reasonableness and timeliness of any written offer in compromise made by a party to the action.

15657.2. Notwithstanding this article, any cause of action for injury or damage against a health care provider, as defined in Section 340.5 of the Code of Civil Procedure, based on the health care provider's alleged professional negligence, shall be governed by

those laws which specifically apply to those professional negligence causes of action.

15657.3. (a) The department of the superior court having jurisdiction over probate conservatorships shall also have concurrent jurisdiction over civil actions and proceedings involving a claim for relief arising out of the abuse of an elderly or dependent adult, if a conservator has been appointed for plaintiff prior to the initiation of the action for abuse.

(b) The department of the superior court having jurisdiction over probate conservatorships shall not grant relief under this article if the court determines that the matter should be determined in a civil action, but shall instead transfer the matter to the general civil calendar of the superior court. The court need not abate any proceeding for relief pursuant to this article if the court determines that the civil action was filed for the purpose of delay.

(c) The death of the elder or dependent adult does not cause the court to lose jurisdiction of any claim for relief for abuse of an elder or dependent adult.

(d) Upon petition, after the death of the elder or dependent adult, the right to maintain an action shall be transferred to the personal representative of the decedent, or if none, to the person or persons entitled to succeed to the decedent's estate.

SEC. 4. Article 8.5 (commencing with Section 15657) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 8.5. Civil Actions for Abuse of Elderly or Dependent Adults

15657. Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, neglect as defined in Section 15610.57, or fiduciary abuse as defined in Section 15610.30, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, in addition to all other remedies otherwise provided by law:

(a) The court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) The limitations imposed by subdivision (c) of Section 573 of the Probate Code on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be

imposed against an employer.

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- (a) The value of the abuse-related litigation in terms of the quality of life of the elder or dependent adult, and the results obtained.
- (b) Whether the defendant took reasonable and timely steps to determine the likelihood and extent of liability.
- (c) The reasonableness and timeliness of any written offer in compromise made by a party to the action.

15657.2. Notwithstanding this article, any cause of action for injury or damage against a health care provider, as defined in Section 340.5 of the Code of Civil Procedure, based on the health care provider's alleged professional negligence, shall be governed by those laws which specifically apply to those professional negligence causes of action.

15657.3. (a) The department of the superior court having jurisdiction over probate conservatorships shall also have concurrent jurisdiction over civil actions and proceedings involving a claim for relief arising out of the abuse of an elderly or dependent adult, if a conservator has been appointed for plaintiff prior to the initiation of the action for abuse.

(b) The department of the superior court having jurisdiction over probate conservatorships shall not grant relief under this article if the court determines that the matter should be determined in a civil action, but shall instead transfer the matter to the general civil calendar of the superior court. The court need not abate any proceeding for relief pursuant to this article if the court determines that the civil action was filed for the purpose of delay.

(c) The death of the elder or dependent adult does not cause the court to lose jurisdiction of any claim for relief for abuse of an elder or dependent adult.

(d) Upon petition, after the death of the elder or dependent adult, the right to maintain an action shall be transferred to the personal representative of the decedent, or if none, to the person or persons entitled to succeed to the decedent's estate.

SEC. 5. Section 4 of this bill incorporates changes to references to code sections renumbered by SB 1177, and shall only become operative if SB 1177 is chaptered and becomes operative, in which case Section 3 of this bill shall not become operative.